

E-FILED: February 19, 2013

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANDREA CASELLA,
Plaintiff,

v.

ROGER AND NANCY LOLLAR,
Defendants.

No. C12-06310 HRL

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT JUDGE**

**REPORT AND RECOMMENDATION RE
DISMISSAL FOR LACK OF SUBJECT
MATTER JURISDICTION**

Plaintiff Andrea Casella sues for alleged breach of a written contract, claiming that defendants owe \$34,000. The complaint was filed on December 12, 2012 and was randomly assigned to the undersigned magistrate judge for all purposes, including trial. Thus far, there has been no appearance by any defendant. Casella has filed a "Motion for Summary Judgment" (Dkt. No. 7), asserting that she is entitled to judgment on the ground that defendants have not answered her complaint. For the reasons stated below, the undersigned recommends that the complaint be dismissed for lack of federal subject matter jurisdiction and that the motion for summary judgment be denied as moot.

Federal courts have original jurisdiction over civil actions "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A claim "arises under" federal law if, based on the "well-pleaded complaint rule," the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). "If the court determines at

1 any time that it lacks subject-matter jurisdiction, the court must dismiss the complaint.” FED. R.
2 Civ. P. 12(h)(3). Here, plaintiff’s complaint presents claims arising only under state law. There
3 is no suggestion in the allegations that there is any basis for a federal claim for relief.

4 Nor is there any basis for diversity jurisdiction. Federal district courts have jurisdiction
5 over civil actions in which the matter in controversy exceeds the sum or value of \$75,000
6 (exclusive of interest and costs) and is between citizens of different states. 28 U.S.C. §1332.
7 Based on the allegations of Casella’s complaint, it appears that the amount-in-controversy
8 requirement is not met. And, in any event, the complaint indicates that plaintiff and defendants
9 are California citizens.

10 Because the parties have yet to consent to the undersigned’s jurisdiction, this court
11 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned
12 further RECOMMENDS that the newly assigned judge dismiss the complaint for lack of subject
13 matter jurisdiction. The dismissal should be without prejudice to plaintiff to seek relief in the
14 proper court. Plaintiff’s pending “Motion for Summary Judgment” should be denied as moot.

15 Any party may file objections to this Report and Recommendation within fourteen days
16 after being served. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

17 SO ORDERED.

18 Dated: February 19, 2013

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21 HOWARD R. LLOYD
22 UNITED STATES MAGISTRATE JUDGE
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1 5:13-cv-06310-HRL Notice sent by U.S. Mail to:

2 Andrea Casella
3 5460 B Lincoln Way
4 Felton, CA 95018

5 Pro Se Plaintiff

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